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“Barons’ Wars, under Other Names”: Feudalism, Royalism, and the American Founding

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Summary

The Machiavellian Moment was largely responsible for establishing what remains the dominant understanding of American Revolutionary ideology. Patriots, on this account, were radical whigs; their great preoccupation was a terror of crown power and executive corruption. This essay proposes to test the whig reading of patriot political thought in a manner suggested by Professor Pocock’s pioneering first book, *The Ancient Constitution and the Feudal Law*. The whig tradition, as he taught us, located in the remote Saxon past an ‘ancient constitution’ of liberty, in which elected monarchs merely executed laws approved by their free subjects in a primeval parliament. This republican idyll, whigs believed, was then tragically interrupted by the Norman Conquest of 1066, which introduced feudal tenures and monarchical tyranny. Did patriot theorists accept this narrative? The answer, I shall argue, is strikingly mixed. By the early 1770s, appeals to the ‘ancient constitution’ had become less common in patriot writing. And by the end of the 1770s, many patriots had absorbed a completely different understanding of the feudal past—one pioneered by Royalist historians of the seventeenth century and then adapted by Scottish historians of the eighteenth. This shift reflects a broader transformation in patriot political and constitutional theory.

Keywords: American Revolution; feudalism; Royalism; ancient constitution

The story is told of a philosophy professor who every year offered a seminar on Hegel’s *Phenomenology of Spirit*. For four months he would ruthlessly vivisect the book, subjecting its every argument to withering critique. At a certain point, a group

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² Several years ago, I summarized Alexander Hamilton’s argument about the nature of feudalism for my colleague Richard Tuck. ‘Sounds a lot like Smith’, he replied. Much of the credit for the sensible portions of what follows must, accordingly, go to him. I am also indebted to audiences at the Institute of Historical Research, University of London, and St Andrews University for their many helpful comments on my argument—and to Leonidàs Montès, John Robertson, and Michael Rosen for their expert advice.

photograph was to be taken of the faculty in his department. The professor in question turned up at the appointed time, proudly brandishing his worn copy of the *Phenomenology*. ‘Why on earth would you want to be photographed holding that book?’, a colleague asked incredulously. ‘You’ve spent your whole career arguing against it’. The professor responded, ‘What other book is there?’³

J.G.A. Pocock’s *The Machiavellian Moment* is the most consequential single volume on early-modern political thought to have appeared in the last half-century. The fact that generations of rising scholars have established their reputations by subjecting Professor Pocock’s arguments to searching criticism only reinforces this judgment. One may agree or disagree with *The Machiavellian Moment*, but no serious piece of scholarship on early-modern republicanism written after 1975 has been able to ignore it. The royal road that it paved from Machiavelli and Guicciardini to Harrington and his whig successors, and from thence to 1776, has never since lacked for traffic—nor indeed has it been fundamentally rerouted. To a very great extent, the historiography on early-modern republican thought in the post-Vietnam period just is the reception of *The Machiavellian Moment*.

I want to focus in this essay on the event that Professor Pocock famously dubbed ‘the last great act of the civic Renaissance’: the American Revolution.⁴ *The Machiavellian Moment*, along with important and roughly contemporaneous works by Bernard Bailyn and Gordon Wood, was responsible for establishing what remains the

³The professor is said to have been Morris Raphael Cohen. See G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA, 2008), 11.

⁴J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ, 1975), 462.

dominant scholarly understanding of patriot ideology.⁵ American opposition leaders, on this account, were radical whigs—intellectual heirs of the English opposition, or ‘Country’ tradition—whose great preoccupation was a terror of crown power and executive corruption. They took up arms against a tyrannical king bent on their enslavement and a supine Parliament composed of his ‘creatures.’ They saw the events of the 1760s and 1770s refracted through the prism of ‘the Whig canon’, which ‘formed the authoritative literature of this culture’ and accounts for ‘the singular cultural and intellectual homogeneity of the Founding Fathers and their generation’.⁶

I have argued recently in favor of a rather different view of what animated the Revolution—one that is indebted in important ways to Professor Pocock’s own later writings on the subject.⁷ Many patriots of the late 1760s and early 1770s, I suggest, abandoned the whig political tradition in favor of an avowedly Royalist conception of the English constitution and its relation to empire. These theorists developed the view that Parliament possessed no jurisdiction whatsoever over British North America; the colonies, they now claimed, were connected to Britain solely through ‘the person and prerogative of the king’.⁸ But the late eighteenth-century British monarchy was in no position to function as the ‘pervading’ and ‘superintending’ power of the empire. The constitutional settlement that followed the Glorious Revolution had definitively subjected

⁵See also Bernard Bailyn, *The Ideological Origins of the American Revolution*, rev. ed. (Cambridge, MA, 1992 [orig. 1967]); and Gordon Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969).

⁶Pocock, *The Machiavellian Moment*, 507.

⁷Eric Nelson, *The Royalist Revolution: Monarchy and the American Founding* (Cambridge, MA, 2014). My book expands on several insights in J. G. A. Pocock, ‘1776: The Revolution Against Parliament’, in *Three British Revolutions: 1641, 1688, 1776*, ed. J. G. A. Pocock (Princeton, 1980), 265-288.

⁸[Alexander Hamilton], *The Farmer Refuted: or, A more impartial and Comprehensive View of the Dispute between Great-Britain and the Colonies* (New York, 1775), 16.

the king to Parliament, drastically curtailing his prerogatives and recasting him as a pure ‘executive’. Those powers of state that legally remained with the crown were no longer wielded by the person of the king, but rather by ministers who were required to command a parliamentary majority (and who themselves sat in one of the two Houses). Patriots were effectively proposing to turn back the clock on the English constitution by over a hundred years—to separate the king from his Parliament and his British ministers, and to restore ancient prerogatives of the crown that had been extinguished by the whig ascendancy (chiefly the royal ‘negative’, or veto). These figures wanted more monarchy, not less. They likewise championed a strongly anti-whig narrative of English constitutional decline, according to which it was the *erosion* of monarchical power in the wake of the parliamentary revolutions that had corrupted the balanced constitution of Great Britain.

This turn to the royal prerogative, I further claim, proved to be a crucial moment of intellectual formation for the theorists in question. Despite the coming of independence and the abolition of the kingly office in America, those patriots who had most aggressively developed and propagated the neo-Stuart defense of prerogative power during the imperial crisis—John Adams, James Wilson, Alexander Hamilton, James Iredell, Benjamin Rush, and their allies—never changed their minds. They continued to argue for the next two decades that sweeping prerogatives in a single chief magistrate were not only compatible with the liberties of citizens and subjects, but in fact necessary for the preservation of free states. They emerged as fierce critics of the overwhelmingly whig state constitutions adopted during the first year of the Revolutionary War, and ultimately presided over a broad resurgence of Royalist constitutionalism in the late

1770s and 1780s. Their great triumph came in the Philadelphia Convention of 1787, when delegates agreed to invest the new president of the United States with many of the same prerogative powers that these ‘patriot Royalists’ had unsuccessfully urged George III to revive fifteen years earlier. The Constitution, I argue, upheld the spirit of ’75.

In what follows I shall not be defending any of these claims directly, but rather testing them in a manner suggested by Professor Pocock’s pioneering first book, *The Ancient Constitution and the Feudal Law* (1957). The whig tradition, as he taught us in that early work, organized itself around a very particular understanding of the place of feudalism within English history. Whigs located in the remote Saxon past an ‘ancient constitution’ of balanced, free government, in which elected monarchs merely executed laws approved by their independent, landowning subjects in a primeval parliament. This republican idyll, they believed, was then tragically interrupted by the Norman conquest of 1066, which introduced feudal tenures and, consequently, royal tyranny.⁹ The great constitutional watersheds of English medieval and early-modern history—chief among them Magna Carta—were celebrated in the whig canon for restraining the power of the crown and thereby reconfirming the ancient liberties enjoyed by Englishmen before the arrival of the Conqueror.¹⁰

⁹ An alternative whig view identified the ancient constitution with a pristine form of feudalism itself, in which the peerage had been ascendant and the king’s authority radically circumscribed. See, for example, Pocock, *The Machiavellian Moment*, 416-420 (discussing Henry Neville).

¹⁰ J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge, 1957). It is important to stress that, by the eighteenth century, whig historiography had come to combine elements of two different lines of argument. The original discourse of the “ancient constitution” lacked any conception of feudalism as a distinctive juridical system and, accordingly, denied that 1066 had yielded a rupture in English law. Opposed to this earlier understanding was the idea of the “Norman Yoke,” according to which the Conquest had subjected England to the will of an absolute ruler who completely remade the law and constitution (a view shared by Levellers, who wished to dismiss the English constitution

If we are interested in determining whether American patriots ought to be classified as whigs, it would accordingly seem natural to begin by exploring their attitude toward feudalism. Did they argue in the conventional ‘Country’ manner that feudalism was catastrophic because absolutist? Or, in the mode of some neo-Harringtonian writers, that the great alliance in feudal politics was that between the barons and the people against the Crown? Did patriot theorists, like good ‘old’ whigs, assert the antiquity of the House of Commons and the purely ‘executive’ character of Saxon kingship? The answer to these questions, I shall argue, is decidedly mixed. By the early 1770s, appeals to the ‘ancient constitution’ had become less common in patriot writing, and jeremiads against feudal absolutism had largely vanished.¹¹ And by the end of the 1770s, many patriots had absorbed a completely different understanding of the feudal past—one pioneered by

as tyrannical and illegitimate, and extreme Royalists, who sought to establish the dependence of all political and legal institutions on the will of the sovereign). Later whigs, in contrast, tended to acknowledge (and lament) the transition to feudalism, but at the same time to insist upon the continued prescriptive force of the ancient liberties.

¹¹ James Wilson makes no mention of the Saxon constitution of liberty in his *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* (1774), and, indeed, appears in this text to deny the antiquity of the House of Commons (see *The Works of James Wilson*, ed. Robert Green McCloskey, 2 vols. (Cambridge, MA, 1967), 2:729). The young Alexander Hamilton briefly insists in *The Farmer Refuted* (1775) that the right of the Commons to send representatives to Parliament existed ‘from time immemorial; recognized and established by Magna Charta’—and asserts a corresponding right of the American colonists (*The Farmer Refuted*, 10). Even at this stage, however, Hamilton had no interest in denouncing feudalism as a form of monarchical tyranny (see, esp., *The Farmer Refuted*, 16). Thomas Jefferson, for his part, was eager to argue in 1774 that landholding in America should be understood to resemble pre-Norman, Saxon tenures, rather than the feudal tenures of Britain itself (‘America was not conquered by William the Norman’), and that the ‘common law’ preserves a set of Saxon ideas about property (see Thomas Jefferson, *Summary View of the Rights of British America* (Williamsburg, 1774), 6, 19-20). He likewise endorsed the notion of an ancient constitution, although he too declined to stress the absolutism of feudal government. For Jefferson’s evolving understanding of feudalism, see Daniel Clinkman, ‘The Jeffersonian Moment: Feudalism and Reform in Virginia, 1776-1786’ (Unpublished PhD Dissertation, University of Edinburgh, 2013). Compare also Moses Mather, *America’s Appeal to the Impartial World* (Hartford, 1775), 8-9.

Royalist historians of the seventeenth century and then adapted by Scottish historians of the eighteenth.

I hope to illuminate this ideological turn by comparing the cases of John Adams and Alexander Hamilton. These figures represent, for Professor Pocock in *The Machiavellian Moment*, the antipodes of the American ideological landscape in the late 1780s and 1790s: Adams, the unreconstructed ‘Country’ whig, or the final champion of the ‘unmodified theory of classical republicanism’, and Hamilton, the first ‘Court’ theorist of the new American *imperium*, who embraced the model of a sovereign parliamentary ministry ruling through ‘influence’ and ‘patronage’.¹² This characterization undoubtedly points to real differences in outlook between the two men, but I want to emphasize instead their profound ideological agreement at this stage in the aftermath of the Revolution. As we shall see, the two offered identical accounts of the nature of feudal government, and did so in service of precisely the same political program: they wished to establish that the crucial alliance in modern politics is that between the one and the many against the few. In this respect, they were simply applying the Royalist constitutionalism that they had jointly pioneered in the 1770s to the new political environment of the infant United States.

I

There is no serious dispute that, before the constitutional convulsions of the later 1760s and 1770s, whig ideology and historiography dominated political discourse in British America. Indeed, for an impeccably orthodox statement of the whig theory of feudalism

¹² Pocock, *The Machiavellian Moment*, 526, 528-9.

and the ancient constitution, we need look no further than John Adams's own early *Dissertation on the Canon and Feudal Law* (1765).¹³ Feudalism, Adams announces in that essay, was 'originally formed, perhaps, for the necessary defence of a barbarous people against the inroads and invasions of her neighboring nations, yet for the same purposes of tyranny, cruelty, and lust, which had dictated the canon law, it was soon adopted by almost all the princes of Europe, and wrought into the constitutions of their government'.¹⁴ Adams goes on to explain the system's genesis and characteristic features:

It was originally a code of laws for a vast army in a perpetual encampment. The general was invested with the sovereign propriety of all the lands within the territory. Of him, as his servants and vassals, the first rank of his great officers held the lands; and in the same manner the other subordinate officers held of them; and all ranks and degrees held their lands by a variety of duties and services, all tending to bind the chains the faster on every order of mankind. In this manner the common people were held together in herds and clans in a state of servile dependence on their lords, bound, even by the tenure of their lands, to follow them, whenever they commanded, to their wars, and in a state of total ignorance of every thing divine and human, excepting the use of arms and the culture of their lands.¹⁵

¹³For a lucid account of the diffusion of the 'ancient constitution' idiom in 1760s British America, see John Phillip Reid, *The Ancient Constitution and the Origins of Anglo-American Liberty* (DeKlab, IL, 2005). See also see Trevor Colbourn, *The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution*, 3rd ed. (Indianapolis, 1998). My suggestion, elaborated below, is that many patriot writers later came to reject this cluster of ideas. It is noteworthy that only a very small number of Reid's and Colbourn's examples of American endorsements of the whig account of feudalism date from after 1770.

¹⁴*The Political Writings of John Adams*, ed. George W. Carey (Washington, DC, 2000), 6.

¹⁵*The Political Writings of John Adams*, 6. It is interesting to note, however, that Adams takes this account of feudalism as 'a code of laws for a vast army in a perpetual encampment' directly from William Robertson, whose basic posture is deeply anti-whig (Robertson, *History of Scotland*, 2 vols. (London, 1759), 1:12-13: 'A feudal kingdom was properly the encampment of a great army'). Robertson's central claim (possibly derived, as we shall see, from Adam Smith's Edinburgh lectures) was that, while the notion of the feudal monarch as sovereign proprietor of all lands might tempt us to 'pronounce him a powerful, nay an absolute Monarch', in fact 'no conclusion...would be more rash, or

‘The feudal law’, brought to England by one of those ‘princes of Europe’ in 1066, had established an absolute monarchy, in which the king was ‘sovereign proprietor’ of all land. This tyrannical regime, as Adams explained in a contemporaneous essay, had displaced the pristine constitution of liberty that had ‘prevailed in Britain from an immense antiquity’—at the center of which had stood ‘the house of commons’, an inheritance from ‘Saxon times’.¹⁶ The new feudal monarch’s position was then tragically buttressed by ‘all that dark ribaldry of hereditary, indefeasible right, -- the Lord’s anointed, -- and the divine, miraculous original of government, with which the priesthood had enveloped the feudal monarch in clouds and mysteries, and from whence they had deduced the most mischievous of all doctrines, that of passive obedience and non-resistance’.¹⁷

From time to time, the liberties of subjects as free landowners were heroically reaffirmed in the face of this tyranny of ‘arbitrary kings and cruel priests’, as in the case of ‘the transactions at Running Mede, (the meadow, near Windsor, where Magna Charta was signed;)’, and eventually ‘the people grew more and more sensible of the wrong that was done them by these systems, more and more impatient under it, and determined at all hazards to rid themselves of it’.¹⁸ The fateful confrontation between liberty and feudal absolutism arrived at long last ‘under the execrable race of the Stuarts’, when ‘the struggle between the people and the confederacy aforesaid of temporal and spiritual

worse founded. The genius of the feudal government was purely aristocratical’ (1:12). Adams neglects this aspect of Robertson’s narrative in the *Dissertation*, but, several years later, would take it far more seriously.

¹⁶ Adams, ‘The Earl of Clarendon to William Pym’ (January 1766) in *The Works of John Adams*, ed. Charles Francis Adams, 10, vols. (Boston, 1851), 3:481.

¹⁷ *The Political Writings of John Adams*, 10.

¹⁸ *The Political Writings of John Adams*, 7.

tyranny, became formidable, violent, and bloody'.¹⁹ 'It was this great struggle', Adams declares, 'that peopled America. It was not religion alone, as is commonly supposed; but it was a love of universal liberty, and a hatred, a dread, a horror, of the infernal confederacy [between popery and absolutism] before described, that projected, conducted, and accomplished the settlement of America'. The first emigrants to New England were driven into the wilderness by their loathing of 'all the base services and servile dependencies of the feudal system', and their latter-day descendants were determined to keep faith with this crusading whiggery.²⁰

There was, however, a second and very different eighteenth-century understanding of the feudal past—one that derived instead from the seventeenth-century Royalist historiography of Sir Henry Spelman and Robert Brady.²¹ As Professor Pocock demonstrated in *The Ancient Constitution and the Feudal Law*, this rival tradition denied the existence of a pre-feudal constitution of liberty. Its exponents insisted that Parliament was a fundamentally feudal institution and that the House of Commons had not existed in any form until the high medieval period. Just as importantly for our purposes, these historians rejected the whig conceit that feudalism was pathological because it amounted to monarchical absolutism. On the contrary, they argued, the distinctive pathology of feudalism was its tendency to weaken the king at the expense of 'Factious barons', who (in Brady's words) 'when they had secured their own Liberties, rather made use of them

¹⁹*The Political Writings of John Adams*, 7. Adams's account here strongly resembles that of James Otis, written the previous year. See James Otis, *The Rights of the British Colonies Asserted and Proved* (1764) in *Pamphlets of the American Revolution*, ed. Bernard Bailyn (Cambridge, MA, 1965), 1:441.

²⁰*The Political Writings of John Adams*, 10.

²¹Pocock, *The Ancient Constitution and the Feudal Law*, 91-123; 182-228.

to Oppress, than Relieve their Tenants and Neighbours'.²² And Magna Carta itself could only properly be understood as an episode in this disturbing narrative of creeping aristocratic hegemony and perilous royal retreat—yet another encroachment by 'incorrigible Norman rebels against their own Norman princes'.²³

This revisionist line found perhaps its most committed advocates among Scottish historians of the later eighteenth century.²⁴ Virtually all educated Americans of the Revolutionary period were familiar, for example, with David Hume's *History of England* (1754-1761),²⁵ which gleefully denied the antiquity of the House of Commons and announced that the dynamics of 'feudal governments' created 'so strong a bias towards aristocracy, that the royal authority was extremely eclipsed in all the European states'.²⁶ The fact that 'according to the principles of feudal law, the king was the supreme lord of

²² Robert Brady, *A Complete History of England, from The First Entrance of the Romans under The Conduct of Julius Caesar, Unto the End of the Reign of King Henry III* (London, 1685), B1r.

²³ Brady, *A Complete History*, B2r.

²⁴ For the influence of Brady and Spelman on Scottish historians, see R.J. Smith, *The Gothic Bequest: Medieval Institutions in British Thought, 1688-1863* (Cambridge, 1987), esp. 71-96.

²⁵ See, for example, Mark G. Spencer, *David Hume and Eighteenth-Century America* (Rochester, 2005).

²⁶ David Hume, *The History of England*, 6 vols. (Indianapolis, 1983), 1:466 ('it is agreed, that the commons were no part of the great council, till some ages after the conquest'), 464. For a dissenting Scottish view, also well-known to American theorists, see Henry Home, Lord Kames, *Essays Upon Several Subjects Concerning British Antiquities*, 3rd ed. (Edinburgh, 1763). Kames argued that feudalism tended to increase the 'power and authority' of the king (p. 17). The question of whether Hume, Robertson, and Smith are themselves meaningfully classified as whigs is, of course, a very old one. Duncan Forbes suggested in a classic essay that they subscribed to a 'scientific' variant of whiggism, which allowed them to reject the pieties of ancient constitutionalism and other central whig commitments without thereby becoming tories (Duncan Forbes, "'Scientific' Whiggism: Adam Smith and John Millar' in *Cambridge Journal* 7 (1954): 643-670). I take no position on the issue here. Suffice it to say that, if Hume and Smith were whigs of any sort, they clearly were not radical or 'old' whigs of the kind that American patriots are supposed to have been.

the landed property’ was, for Hume, little more than a misleading formality.²⁷ ‘Instead of dreading the growth of monarchical power’ under feudalism, he insisted, ‘we might rather expect, that the community would every where crumble into so many independant baronies, and lose the political union, by which they were cemented’ (he cites Brady directly on this point²⁸). Indeed, in elective monarchies ‘the event was commonly answerable to this expectation; and the barons, gaining ground on every vacancy of the throne, raised themselves almost to a state of sovereignty, and sacrificed to their power both the rights of the crown and the liberties of the people. But hereditary monarchies had a principle of authority, which was not so easily subverted; and there were several causes, which still maintained a degree of influence in the hands of the sovereign’.²⁹

One of these ‘several causes’ for the survival of monarchical authority in hereditary feudal systems deserves particular mention: the mutually-supporting alliance between king and people. ‘The people’, on Hume’s account, ‘had still a stronger interest

²⁷ Hume, *The History of England*, 1:461.

²⁸ See Hume, *The History of England*, 1:167, 171. Hume’s historical narrative is similar in some respects to that developed by ‘Court’ whigs under Walpole. Lord Hervey, for example, had at least hinted at a Brady-esque rejection of the ancient constitution of liberty, and had likewise stressed the absolutism of the Tudors (and of Elizabeth in particular)—thereby refuting the old whig charge that tyranny arrived with the Stuarts. But Hervey’s narrative is also quite different from Hume’s. He regards all of English history before 1688 as a fairly undifferentiated epoch of tyranny (the Stuarts too, on his account, were an ‘unhappy and undeserving Race’, whose reigns amounted to ‘one continued Series of Folly and Injustice’ (29)), and he does not associate feudalism with a distinctive *kind* of tyranny (i.e. baronial). Most importantly, his account contains no hint of the view that there is a natural alliance in favor of liberty between king and people against the nobles. See John, Baron Hervey, *Ancient and Modern Liberty Stated and Compar’d* (London, 1734). A more important antecedent of Hume (and one from whom he paraphrased freely on the question of feudal history) was the Jacobite Thomas Carte’s *A General History of England*, 4 vols. (London, 1747-1755). Carte’s narrative, in turn, was profoundly indebted to Brady. For a lucid account of Hume’s historiographical background, see James Harris, *Hume: An Intellectual Biography* (Cambridge, 2015), esp. pp. 308-325.

²⁹ Hume, *The History of England*, 1:464.

to desire the grandeur of the sovereign; and the king, being the legal magistrate, who suffered by every internal convulsion or oppression, and who regarded the great nobles as his immediate rivals, assumed the salutary office of general guardian or protector of the commons'.³⁰ King and commons, in other words, shared a common foe: the rapacious peers of the realm. The people looked to the monarch for protection against the predations of their immediate lords, and the king sought to raise up the people as a counterweight to his aristocratic rivals. This alliance emerges in Hume's *History* as the distinguishing feature of feudal politics. It was during the reign of Edward I, who 'considered the great barons both as immediate rivals of the crown, and oppressors of the people' and therefore sought to advance the 'inferior orders of the state', that 'the third estate, that of the commons' finally received a share in government.³¹ And, once in Parliament, their deputies 'instead of checking and controuling the authority of the king...were naturally induced to adhere to him, as the great fountain of law and justice, and to support him against the power of the aristocracy'.³²

Armed with this analysis, Hume is then able to offer a nuanced, but still highly revisionist account of Magna Carta. Against the whig view that the charter intended to reconfirm the liberties of 'the people' under a primeval Saxon constitution, Hume insists that, in fact, the people had nothing to do with the matter. The charter's 'principal articles [were] calculated for the interest of the barons' alone, and it aimed only 'to encrease the power and independance of an order of men, who were already too

³⁰ Hume, *The History of England*, 1:464.

³¹ Hume, *The History of England*, 2:75, 109.

³² Hume, *The History of England*, 2:109. On Hume's view of the alliance between king and people, see, most recently, Andrew Sabl, *Hume's Politics: Coordination and Crisis in the History of England* (Princeton, 2012), esp. 100-103. See also Harris, *Hume*, 392-397.

powerful, and whose yoke might have become more heavy on the people than even that of an absolute monarch'.³³ Indeed, the peers were 'by this convention, really invested with the sovereignty of the kingdom: They were rendered co-ordinate with the king, or rather superior to him, in the exercise of the executive power'.³⁴ Magna Carta, rightly understood, aimed at nothing less than a 'perpetual and total subjection' of the king 'under his own rebellious vassals'.³⁵

At this point, however, Hume's argument takes a somewhat unexpected turn. While Magna Carta may have been conceived as a mere instrument of aristocratic advancement, he insists that, in the end, it emerged as something more complicated and benign. As a tactical matter, 'the barons, who alone drew and imposed on the prince this memorable charter, were necessitated to insert in it other clauses of a more extensive and more beneficent nature: They could not expect the concurrence of the people, without comprehending, together with their own, the interests of inferior ranks of men; and all provisions, which the barons, for their own sake, were obliged to make, in order to ensure the free and equitable administration of justice, tended directly to the benefit of the whole community'.³⁶ Moreover, Hume contends that, even in their treatment of the crown, the nobles deserve some praise for their conduct at Runnymede: "what we are most to admire, is the prudence and moderation of those haughty nobles themselves, who were enraged by injuries, inflamed by opposition, and elated by a total victory over their sovereign. They were content, even in this plenitude of power...not to diminish too far the power and revenue of the crown".³⁷ Even the excesses of the peers 'can be ascribed

³³ Hume, *The History of England*, 1:444.

³⁴ Hume, *The History of England*, 1:447.

³⁵ Hume, *The History of England*, 1:448.

³⁶ Hume, *The History of England*, 1:444.

³⁷ Hume, *The History of England*, 1:446.

only to the faithless and tyrannical character of the king himself, of which they had long had experience, and which, they foresaw, would, if they provided no farther security, lead him soon to infringe their new liberties, and revoke his own concessions. This alone gave birth to those other articles, seemingly exorbitant, which were added as a rampart for the safeguard of the Great Charter'.³⁸ King John remains the chief villain in this story, even as Hume advances his decidedly Royalist understanding of the governing dynamics of feudalism.

The narrative would become a good deal less nuanced in the hands of Hume's close friend, Adam Smith.³⁹ Smith first turned systematically to the question of feudal history in his 'Lectures on Jurisprudence' at Glasgow University. The context of these early meditations is significant. In February and March of 1763, Smith delivered a series of lectures on slavery, in which he argued that the practice is always most cruel and barbaric in republics, and that 'in a republican government it will scarcely ever happen' that the institution is 'abolished'.⁴⁰ Kings, in contrast, will often see to it that slaves are treated more kindly, because doing so 'may tend to strengthen [their] authority by

³⁸Hume, *The History of England*, 1:446.

³⁹A second influential endorsement of Hume's general view came in William Robertson, *The History of the Reign of the Emperor Charles V*, 3 vols. (Dublin, 1769). See esp. I:13-17; 33-36. Robertson's account may well have been indebted to Smith's Edinburgh lectures (and it was anticipated in important respects by Robertson's own *History of Scotland* (1759)). It clearly inspired Josiah Tucker's discussion of feudalism in *A Treatise Concerning Civil Government* (London, 1781). Tucker, like Robertson, emphasized the importance of the crusades as a precipitating cause of the rise of cities (see esp. pp. 309-319) and he was excoriated by whig opponents for 'attempting to debase the people' by exaggerating 'the oppressions of the feudal aristocracy' and 'endeavor[ing] to demonstrate that the military tenants were the only freemen of the realm, and that the citizens of the Buroughs originated at the late period from the indulgent avarice of the Norman monarchs'. See James Ibbetson, *A Dissertation on the National Assemblies Under the Saxon and Norman Governments* (London, 1781), 33. Quoted in Reid, *Ancient Constitution*, 64.

⁴⁰Adam Smith, *Lectures on Jurisprudence*, ed. R.L. Meek, D.D. Raphael, and P.G. Stein (Indianapolis, 1982), 181.

weakening that of the nobles'.⁴¹ Moreover, a monarch 'is somewhat more of an impartial judge, and by this means his compassion may move him to slacken the rigour of authority of the masters'.⁴² But even a benign monarch will find it nearly impossible to abolish slavery by fiat. The fact that slavery, or villeinage, was abolished in parts of Europe—and in Britain in particular—has to do, on Smith's account, with the distinctive character and history of feudal government.

The defining political reality of feudalism, for Smith as for Hume, was the 'power of the great lords'.⁴³ Two potent and salutary forces, however, arrayed themselves against this power: the clergy and the king (note this is the precise inverse of Adams's whig argument about twin horrors of the canon and feudal law). 'The kings interest', in Smith's telling, 'tended also to promote the same thing [as the clergy's]. The power of the nobles, which often was dangerous to their authority, consisted in the dependence of their vassals, and theirs again of their vassals or villains... The kings interest also led him on this account to lessen the authority of the nobles and their vassals over their villains'.⁴⁴ It transpired therefore that 'the landholders were in this manner restricted in their authority over the villains by two of the most powerfull members of the state. The clergy, a body at that time very powerful, thought it their interest to encourage the villains, and the authority of the king, the head of the state, coincided with theirs'.⁴⁵ Smith's conclusion is that 'the great power of the clergy thus concurring with that of the king set the slaves at liberty'.⁴⁶ This, he believes, was no accident. 'The power of the

41¹ Smith, *Lectures on Jurisprudence*, 182.

42¹ Smith, *Lectures on Jurisprudence*, 182.

43¹ Smith, *Lectures on Jurisprudence*, 187.

44¹ Smith, *Lectures on Jurisprudence*, 188.

45¹ Smith, *Lectures on Jurisprudence*, 188-189.

46¹ Smith, *Lectures on Jurisprudence*, 189.

nobles', he explains, 'has allways been brought to ruin before a system of liberty has been established, and this indeed must always be the case. For the nobility are the greatest opposers and oppressors of liberty that we can imagine. They hurt the liberty of the people even more than an absolute monarch'.⁴⁷ Accordingly, wherever 'authority of the king and of the clergy' are wanting, 'slavery still continues'.⁴⁸

Equally important is Smith's distinctive account of *how* kings went about strengthening the villains against the nobles. He turns to this question in a subsequent lecture: 'The king was very jealous of the power of his nobles, who frequently raised great disturbances and turned out many of the kings, John, Henry, <and> took the power for some time out of the hands of the others'.⁴⁹ The king accordingly 'took every method to lessen their power, and for this purpose as I mentioned he strengthened the hands of their villains as well as the vassals, and took every method to render them more independent, and also by supporting and strengthening the burrows, which they did by allowing them to be formed into a corporation, to defend themselves by a wall and guard'.⁵⁰ The feudal monarchs challenged their nobles by becoming patrons of cities and towns, in which 'villains' finally became 'burghers', free from feudal service to their lords—and, ultimately, by summoning 'Representatives' of the Commons to sit in Parliament.⁵¹

⁴⁷ Smith, *Lectures on Jurisprudence*, 264. This passage appears in Smith's lecture of March 8, 1763.

⁴⁸ Smith, *Lectures on Jurisprudence*, 189.

⁴⁹ Smith, *Lectures on Jurisprudence*, 259.

⁵⁰ Smith, *Lectures on Jurisprudence*, 259. This passage appears in Smith's lecture of March 7, 1763.

⁵¹ Smith, *Lectures on Jurisprudence*, 259.

Smith repeats and expands upon this analysis in Book 3, Chapter 3 of *The Wealth of Nations*, ‘Of the Rise and Progress of Cities and Towns, after the Fall of the Roman Empire’. The central passage in this account deserves to be quoted at length:

It must be remembered, that, in those [feudal] days, the sovereign of perhaps no country in Europe was able to protect, through the whole extent of his dominions, the weaker part of his subjects from the oppression of the great lords. Those whom the law could not protect, and who were not strong enough to defend themselves, were obliged either to have recourse to the protection of some great lord, and in order to obtain it, to become either his slaves or vassals; or to enter into a league of mutual defence for the common protection of one another. The inhabitants of cities and burghs, considered as single individuals, had no power to defend themselves; but by entering into a league of mutual defence with their neighbours, they were capable of making no contemptible resistance. The lords despised the burghers, whom they considered not only as a different order, but as a parcel of emancipated slaves, almost of a different species from themselves. The wealth of the burghers never failed to provoke their envy and indignation, and they plundered them upon every occasion without mercy or remorse. The burghers naturally hated and feared the lords. The king hated and feared them too; but though, perhaps, he might despise, he had no reason either to hate or fear the burghers. Mutual interest, therefore, disposed them to support the king, and the king to support them against the lords. They were the enemies of his enemies, and it was his interest to render them as secure and independent of those enemies as he could.⁵²

Acting on the basis of this ‘mutual interest’ shared with the common people, the English feudal monarchs granted the burghers ‘magistrates of their own, the privilege of making bye-laws for their own government, that of building walls for their own defence, and that of reducing all their inhabitants under a sort of military discipline, he gave them all the means of security and independency of the barons which it was in his power to bestow’.⁵³ Indeed, Smith adds strikingly that ‘the princes who lived upon the worst terms with their barons, seem accordingly to have been the most liberal in grants of this kind to their

⁵²Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, 2 vols., ed. R.H. Campbell, A.S. Skinner, and W.B. Todd (Indianapolis, 1981), 1:401-402.

⁵³Smith, *Wealth of Nations*, 1:402.

burghs. King John of England, for example, appears to have been a most munificent benefactor to his towns'.⁵⁴ Here the hated King John—whom even Hume had pilloried as a tyrant, 'destructive to his people'⁵⁵—appears as a (self-interested) champion of the commons. Magna Carta, on this revisionist account, was fundamentally a baronial assault on the alliance between king and people. It has value in historical retrospect only because the abuses that it made possible ultimately prompted the people to cement their alliance with the monarch, thus laying the foundations for the establishment of a new 'system of liberty'.

Smith's final verdict on feudalism is therefore straightforward. While the introduction of feudal tenures may have been intended 'to strengthen the authority of the king, and to weaken that of the great proprietors, it could not do either sufficiently for establishing order and good government among the inhabitants of the country; because it could not alter sufficiently that state of property and manners from which the disorders arose'.⁵⁶ 'The authority of government', Smith adds in a crucial turn of phrase, 'still continued to be, as before, too weak in the head, and too strong in the inferior members; and the excessive strength of the inferior members was the cause of the weakness of the head'.⁵⁷ As a result, 'after the institution of feudal subordination, the king was as incapable of restraining the violence of the great lords as before. They still continued to make war according to their own discretion, almost continually upon one another, and very frequently upon the king; and the open country still continued to be a scene of

⁵⁴ Smith, *Wealth of Nations*, 1:402.

⁵⁵ Hume, *History of England*, 1:452.

⁵⁶ Smith, *Wealth of Nations*, 1:417.

⁵⁷ Smith, *Wealth of Nations*, 1:418.

violence, rapine, and disorder.’ This period is therefore most properly described, not as an age of royal absolutism, but rather as ‘the times of feudal anarchy’.⁵⁸

II

Adam Smith’s name does not appear in the surviving notes from the Constitutional Convention, nor is he mentioned in *The Federalist* or in the minutes of the debates over ratification in the various state conventions. Scholars have tended to conclude from this fact that his ideas played no appreciable role in these debates, and they have accordingly sought to explain why this might have been the case.⁵⁹ Donald Winch, for example, points to Smith’s very public embrace of the revenue measures that launched the patriot opposition to Britain in the 1760s.⁶⁰ Smith was, in Hume’s phrase, ‘very zealous in

⁵⁸ Smith, *Wealth of Nations*, 1:386. Writing several years before Smith (although possibly influenced by his Edinburgh lectures of 1748-1750), William Robertson referred to ‘the universal anarchy’ of feudalism (Robertson, *History*, 16). Hume, for his part, had seen within this form of political life ‘a mixture of...order and anarchy, stability and revolution’ (*History of England* 1:456). Gibbon likewise later referred to the ‘feudal anarchy of Europe’ and ‘the days of feudal anarchy’. See Edward Gibbon, *The History of the Decline and Fall of the Roman Empire*, ed. J.B. Bury, 12 vols. (New York, 1906), 7:323, 361. Chapter 53, in which this phrase appears, was not published until 1788. For Robertson’s debts to Smith, see Nicholas Phillipson, ‘Providence and progress: and introduction to the historical thought of William Robertson’ in *William Robertson and the Expansion of Empire*, ed. Stewart J. Brown (Cambridge, 1997): 55-73 (esp. 59-60).

⁵⁹ For the tendency of the secondary literature to assume that Smith played virtually no role in American political argument in the 1780s, see the historiographical summary in Samuel Fleischaker, ‘Adam Smith’s Reception among the American Founders, 1776-1790’ in *William and Mary Quarterly* 59 (2002): 897-924 (see esp. pp. 897-900).

⁶⁰ Donald Winch, ‘Adam Smith’s Colonial Politics’ in *Libéralisme à l’épreuve; Adam Smith et l’économie coloniale*, ed. F. Démier and D. Diatkine, *Cahiers d’économie politique*, Numbers 27-28 (L’Harmattan, 1996), 39-55. See also Andrew Skinner, ‘Adam Smith and the American Revolution’ in *Presidential Studies Quarterly* 7 (1977): 75-87 (esp. 75-77); and Ian McLean and Scot M. Peterson, ‘Adam Smith at the Constitutional Convention’ in *Loyola Law Review* 56 (2010): 95-133. McLean and Peterson (along with Fleischaker) argue, however, that Smith’s influence shaped the Establishment and Free Exercise clauses of the First Amendment, despite the fact that his views were never cited

American affairs'.⁶¹ He personally advised both the Townshend and North ministries on colonial taxation,⁶² and, despite his well-known disapproval of the system of trade imposed on the colonies by the Navigation Acts, he flatly rejected the patriot constitutional vision of a union of distinct dominions connected only by the crown.⁶³ He had also insisted that 'in every thing, except their foreign trade, the liberty of the English colonists to manage their own affairs their own way is...in every respect equal to that of their fellow-citizens at home'—and had suggested that the 'leading men of America' were motivated in their opposition to parliamentary jurisdiction, not by principle, but merely by a 'desire to preserve their own importance'.⁶⁴ So perhaps patriots held a grudge against this figure, whom Arthur Lee had denounced in 1776 as 'an enemy of American rights'.⁶⁵ But Winch hints at a more intriguing possibility when he observes that contemporary American acolytes of Smith might find it unpleasant to learn that 'he predicted that the colonists would regret the loss of 'the mildness of their old government'; and that he favoured an empire based on 'regal Government' of the 'mixed' English variety'.⁶⁶ Perhaps, goes the thought, a similar aversion to Smith's pronounced,

explicitly in the Congressional debates.

61 David Hume to Adam Smith, Feb. 8, 1776, in *The Correspondence of Adam Smith*, edited by E. C. Mossner and I. S. Ross, The Glasgow Edition of the Works and Correspondence of Adam Smith (Oxford, 1987), 186. Hume was quoting Smith's patron, the Duke of Buccleuch.

62 See McLean and Peterson, 'Adam Smith at the Constitutional Convention,' 98-101.

63 See *Wealth of Nations*, 2:619-620. For Smith, the relevant alternatives were a full consolidating union (in which Parliament would become an imperial legislature, drawing its membership from both colonies and metropolis) and colonial independence, accompanied by a treaty of commerce. Compare Smith's private memorandum, 'Thoughts on America' (Feb. 1778) in G.H. Guttridge, 'Adam Smith on the American Revolution: An Unpublished Memorial' in *American Historical Review* 38 (1933): 714-720.

64 See *Wealth of Nations*, 2:584-585; 622.

65 See *The Revolutionary Diplomatic Correspondence of the United States*, ed. Francis Wharton, 6 vols. (Washington, 1889), 2:110-111.

66 Winch, 'Adam Smith's Colonial Politics', 15.

if neglected, monarchism explains why whiggish Americans in the 1780s were so reluctant to invoke his arguments and authority.

In fact, Smith was not absent from American debates over ratification, and it was precisely his commitment to monarchical power and the Royalist account of feudal history that endeared him to at least one prominent American theorist. Alexander Hamilton dedicated much of his speech in the New York ratifying convention to the following description of ‘the antient feudal governments’:

It has been proved, that the members of republics have been, and ever will be, stronger than the head. Let us attend to one general historical example. In the antient feudal governments of Europe, there were, in the first place a monarch; subordinate to him, a body of nobles; and subject to these, the vassals or the whole body of the people. The authority of the kings was limited, and that of the barons considerably independent. A great part of the early wars in Europe were contests between the king and his nobility. In these contests, the latter possessed many advantages derived from their influence, and the immediate command they had over the people; and they generally prevailed. The history of the feudal wars exhibits little more than a series of successful encroachments on the prerogatives of monarchy. Here, Sir, is one great proof of the superiority, which the members in limited governments possess over their head. As long as the barons enjoyed the confidence and attachment of the people, they had the strength of the country on their side, and were irresistible. I may be told, that in some instances the barons were overcome: But how did this happen? Sir, they took advantage of the depression of the royal authority, and the establishment of their own power, to oppress and tyrannise over their vassals. As commerce enlarged, and as wealth and civilization encreased, the people began to feel their own weight and consequence: They grew tired of their oppressions; united their strength with that of the prince; and threw off the yoke of aristocracy.⁶⁷

⁶⁷*Debates in the Several States Conventions on the Adoption of the federal Constitution*, ed. Jonathan Elliot, 5 vols. (Washington, DC, 1836), 2:353-354.

This, I suggest, is a straightforward recapitulation of Smith's account.⁶⁸ When Hamilton invokes feudalism to illustrate the principle that 'the members...have been, and ever will be, stronger than the head,' he is quoting directly Smith's insistence that, under feudalism, authority was always 'too weak in the head, and too strong in the inferior members'. And his description of baronial abuses, and the eventual alliance between king and people to which it gave rise, likewise comes recognizably from Book 3 *The Wealth of Nations*.

The provenance of Hamilton's account becomes even more evident when he adapts the same material for inclusion in what we have come to know as *Federalist* 17. Here too his primary interest is in establishing that, in confederated governments, the center ought to fear the periphery, not the periphery the center:

Though the ancient feudal systems were not, strictly speaking, confederacies, yet they partook of the nature of that species of association. There was a common head, chieftain, or sovereign, whose authority extended over the whole nation; and a number of subordinate vassals, or feudatories, who had large portions of land allotted to them, and numerous trains of *inferior* vassals or retainers, who occupied and cultivated that land upon the tenure of fealty or obedience, to the persons of whom they held it. Each principal vassal was a kind of sovereign, within his particular demesnes. The consequences of this situation were a continual opposition to authority of the sovereign, and frequent wars between the great barons or chief feudatories themselves. The power of the head of the nation was commonly too weak, either to preserve the public peace, or to protect the people against the oppressions of their immediate lords. This period of European affairs is emphatically styled by historians, the times of feudal

⁶⁸For the claim that Hamilton wrote an early commentary on *The Wealth of Nations*, see Clinton Rossiter, *Alexander Hamilton and the Constitution* (New York, 1964), 306n26. The evidence for this claim is a comment of John Church Hamilton's that, while serving in the Continental Congress in 1783, his father wrote 'an extended commentary upon [Smith's] *Wealth of Nations*, which is not preserved' (J.C. Hamilton, *History of the Republic of the United States, as Traced in the Writings of Alexander Hamilton and his Contemporaries*, 7 vols. (Philadelphia, 1857-64), 2:514). Hamilton *filis* cites as his source the French linguist Pierre-Étienne du Ponceau, who served as the Baron von Steuben's secretary during the Revolutionary War and then settled in Philadelphia.

anarchy.⁶⁹

It was, as we have seen, Smith who had dubbed the feudal period ‘the times of feudal anarchy’.⁷⁰ Hamilton continues by observing that ‘in general, the power of the barons triumphed over that of the prince; and in many instances his dominion was entirely thrown off, and the great fiefs were erected into independent principalities or States’.⁷¹ And, as he explains in *Federalist* 84, ‘Magna Charta’ was merely one such encroachment on royal power, ‘obtained by the barons, sword in hand, from King John’.⁷² At long last, when ‘the monarch finally prevailed over his vassals, his success was chiefly owing to the tyranny of those vassals over their dependents. The barons, or nobles, equally the enemies of the sovereign and the oppressors of the common people, were dreaded and detested by both; till mutual danger and mutual interest effected a union between them

69[□]*The Federalist Papers*, ed. Clinton Rossiter (New York, 1961), 120-121.

70 The claim that ‘each principal vassal was a kind of sovereign, within his particular demesnes’ likely adapts Hume’s observation that ‘a great baron...considered himself as a kind of sovereign within his territory’ (Hume, *History*, 1:485). What we have here is apparently a pastiche of the two sources. Note, however, that Smith himself adapted precisely the same remark: ‘In those disorderly times, every great landlord was a sort of petty prince. His tenants were his subjects’ (*Wealth of Nations* 1:383).

71[□]*The Federalist*, 121. Hamilton adds that, in this period, ‘when the sovereign happened to be a man of vigorous and warlike temper and of superior abilities, he would acquire a personal weight and influence, which answered, for the time, the purpose of a more regular authority’. This comment also adapts a remark by Hume: ‘where [the king] was possessed of personal vigour and abilities (for his situation required these advantages) he was commonly able to preserve his authority, and maintain his station as head of the community, and the chief fountain of law and justice’. Compare Adams: ‘When the prince was an able statesman and warrior, he was able to preserve order; but when he was weak and indolent, it was common for two or three barons in conjunction to make war upon him...’ (*Defence* 1:75).

72[□]*The Federalist*, 513. Hamilton may have taken this phrase from Hume, who writes that, immediately after the signing of Magna Carta, ‘those generous barons, who first extorted these concessions, still held their swords in their hands’ (Hume, *History of England*, 1:445-446).

fatal to the power of the aristocracy'.⁷³ Quoting Smith yet again, Hamilton insists that it was the 'mutual interest' of king and people—both of whom 'detested and dreaded' (or 'hated and feared') the nobles—that produced the crucial alliance of modern politics.⁷⁴

Interestingly, Hamilton's co-author James Madison seems to have been similarly attracted to this Royalist account of feudal government during the ratification debates.⁷⁵

In *Federalist* 45, he observes that 'in the feudal system...notwithstanding the want of proper sympathy in every instance between the local sovereigns and the people, and the sympathy in some instances between the general sovereign and the latter, it usually happened that the local sovereigns prevailed in the rivalry for encroachments'.⁷⁶

Madison's presentation of the case is less strident than Hamilton's, to be sure: it was only 'in some instances', on his account, that the monarch and the people shared interests or 'sympathy', and the nobles prevailed 'usually', not invariably. But the basic picture of the governing dynamics is the same. Indeed, Madison states forthrightly that 'had no

⁷³*The Federalist*, 121. Hamilton's invocations of the feudal past had evolved a distinctly Royalist flavor by the mid 1770s. In *The Farmer Refuted* (1775), he cited the de jure character of feudal tenures—according to which the king was 'in a legal sense, original proprietor, or lord paramount of all the lands of England'—in order to defend the claim that, '[the king] must have been the original proprietor of all the lands in America, and was, therefore, authorized to dispose of them in what manner he thought proper' (Hamilton, *The Farmer Refuted*, 26). His position was therefore more extreme than Adams's at this stage: the latter had merely argued that *if* anyone in England had a valid claim to the land of America, it could only have been the king, and not Parliament. Hamilton accepts that the king does *in fact* have such a claim. Like the other disciples of Spelman and Brady, he draws Royalist conclusions both from the feudal monarch's juridical strength *and* from his empirical weakness.

⁷⁴Compare Hamilton's insistence in the New York Ratifying Convention that "the President of the United States will be himself the representative of the people. From the competition that ever subsists between the branches of government, the President will be induced to protect their rights, whenever they are invaded by either branch" (*Debates in the Several States Conventions*, 2:253).

⁷⁵As early as 1783, Madison listed *The Wealth of Nations* among the items he felt ought to be included in the new congressional library. See Fleischaker, 'Adam Smith's Reception among the American Founders', p. 901.

⁷⁶*The Federalist*, 290.

external dangers enforced internal harmony and subordination, and particularly, had the local sovereigns possessed the affections of the people, the great kingdoms in Europe would at this time consist of as many independent princes as there were formerly feudatory barons'.⁷⁷

But it was, ironically, John Adams who became the second great American champion of the Royalist account of feudal history. Adams had abandoned the whiggery of the *Dissertation on the Canon and Feudal Law* by the early 1770s, as he pivoted to make the case in favor of the royal prerogative and against any parliamentary jurisdiction over the colonies. In 1773, he momentarily denied the antiquity of the House of Commons and, with it, the conceit of an ancient Saxon constitution of liberty.⁷⁸ 'Our Saxon ancestors', he now reported, 'carried with them, wherever they went, the customs, maxims, and manners of the feudal system', and even 'when they intermingled with the ancient Britons,' they never "disengaged themselves from the whole".⁷⁹ Feudalism, on this revised account, was not introduced *de novo* into Britain by the Norman Conquest, nor had it replaced a weak, elective monarchy among freeholders.⁸⁰ It was substantially present before 1066, and 'the power of the king in the Saxon period' was 'absolute enough'. Indeed, the Anglo-Saxon monarchs 'retained a vast variety of the *regalia principis* of the feudal system, from whence most branches of the present prerogatives of

⁷⁷*The Federalist*, 290.

⁷⁸He thereby repudiated a position that he was still taking publicly as late March, 1772. See 'Notes for an Oration at Braintree, Spring 1772' (*Founding Families: Digital Editions of the Papers of the Winthrops and the Adamses*, ed. C. James Taylor. Boston: Massachusetts Historical Society).

⁷⁹"To the Printers of the *Boston Gazette*, Feb. 1, 1773" in *Works of John Adams*, 3:545.

⁸⁰Spelman himself had stressed that, while the specific character of English 'hereditary and perpetual' feudal tenures had its origin in 1066, '*Feuds and Tenures* and the Feudal law it self, took their original from the Germans and Northern Nations'—and thus long predated the Conquest (*Reliquiae Spelmannianae: The Posthumous Works of Sir Henry Spelman Kt.*, ed. Edmund Gibson (London, 1723): 2-4).

our kings are derived'.⁸¹ The notion of a primeval parliament was, accordingly, mere fancy: to be sure, the odd king 'in ancient time had, in some few instances, condescended to take the advice of his *wittenagemote*, or assembly of wise men' on matters of state, but this council had nothing to do with the commons—and, in any event, 'examples of royal condescension could form no established rule'.⁸²

During the same year, in his debate over constitutional principles with Thomas Hutchinson, Adams went on to endorse the claim that Norman feudalism was, in truth, a state of 'anarchy and confusion', rather than royal tyranny⁸³—and, by the time he turned to draft the Massachusetts constitution in 1779, he had evolved a distinctive rationale for his Royalist commitments.⁸⁴ The great danger in any mixed regime, he now believed,

81 [□]*Works of John Adams*, 3:545.

82 [□]To the Printers of the *Boston Gazette*, Feb. 15, 1773' in *Works of John Adams*, 3:563. This fact is pointed out in Colbourn, *The Lamp of Experience*, p. 112. Interestingly, in his *Discourses on Davila* (1791), Adams adopted a more moderate position on the antiquity of the Commons: 'the people', he now claimed, had played a role in the constitution of 'the Franks, as well as Saxons and other German nations'—but that role was not concretely delineated. See *Works of John Adams*, 6:228.

83 [□]He is quoting Robertson, 'one of our greatest Historians', whose Humean account of feudal history had been published in 1769. See *The Briefs of the American Revolution: Constitutional Arguments Between Thomas Hutchinson, Governor of Massachusetts Bay, and James Bowdoin for the Council and John Adams for the House of Representatives*, ed. John Phillip Reid (New York and London, 1981), 126. Adams's analysis is particularly fascinating here, in that he also paraphrases much of his earlier argument from the *Dissertation*. But the tenor of these remarks has changed. Adams (like the Scottish disciples of Spelman and Brady) now wants to stress the distinction between feudalism as a de jure set of principles and as a de facto social and political reality. As a legal matter, the feudal monarch was sole proprietor of all land (this is a crucial part of Adams's case that only the king, and not Parliament, can have had any claim to the territory of British America), but, in fact, he was lamentably weak.

84 [□]See Nelson, *The Royalist Revolution*, 47-48, 173-174, 181-183, 216-218. Several scholars have argued that Adams's political thought underwent a fundamental shift in the 1780s; on this view, the later Adams jettisoned the orthodox republicanism of the early 1770s in favor of a reactionary and idiosyncratic sort of conservatism. See, chiefly, John R. Howe, *The Changing Political Thought of John Adams* (Princeton, 1966); Wood, *Creation of the American Republic*, 567-592; and Joyce Appelby, 'The New Republican Synthesis and the Changing Political Thought of John Adams', *American Quarterly* 25 (1973), 578-595. Mercy Otis Warren offered an early version of this charge when she

came from the aristocracy. ‘We have so many Men of Wealth, of ambitious Spirits, of Intrigue, of Luxury and Corruption’, Adams fretted, ‘that incessant Factions will disturb our Peace’, unless a powerful chief executive is given the power to check them.⁸⁵

Writing to Jefferson in December of 1787, he reiterated the point: ‘You are afraid of the one—I, of the few. We agree perfectly that the many should have a full fair and perfect Representation.—You are Apprehensive of Monarchy; I, of Aristocracy’.⁸⁶ Adams accordingly insisted that the wealthy few should be quarantined in a legislative chamber of their own (ideally one possessing far less power than the Senate agreed to in Philadelphia), thus preventing them from coming to dominate the popular chamber.⁸⁷

The ‘many’ would then find their crucial support against the encroachments of the

stated in 1805 that, while Adams was abroad serving as ambassador to Great Britain, ‘he became so enamored with the British constitution, and the government, manners, and laws of the nation, that a partiality for monarchy appeared, which was inconsistent with his former professions of republicanism’ (Mercy Otis Warren, *History of the Rise, Progress, and Termination of the American Revolution*, 3 vols. (Boston, 1805), 3:392). Adams himself vehemently denied that his political and constitutional theory—particularly his views on monarchy—had changed in any appreciable way during this period (see Adams to Mercy Otis Warren, July 11, 1807, in *Correspondence of John Adams and Mercy Otis Warren Relating to Her History of the American Revolution*, ed. Charles Francis Adams (1878; repr., New York, 1972), 324-326), and I am inclined to agree with him on this point. While his political perspective changed dramatically in the early 1770s (along with that of most other patriots), I detect no subsequent shift in his fundamental constitutional ideas.

⁸⁵ Adams to Elbridge Gerry, Nov. 4, 1779, in *PJA*, 8:276.

⁸⁶ Adams to Jefferson, Dec. 6, 1787, *Adams-Jefferson Letters*, 213.

⁸⁷ Adams, *Defence of the Constitutions of Government of the United States* (London, 1787-8), 3:299. Compare Jean-Louis Delolme, *The Constitution of England*, (London, 1775), 210-211. Adams was therefore a quite specific kind of anti-aristocratic theorist. He did not propose to abolish the constitutional role of the aristocracy, let alone to eliminate the aristocracy itself. The latter project he took to be straightforwardly impossible, and the former undesirable (on the grounds that ‘natural aristocrats’ must be constitutionally sequestered in their own chamber—and, once quarantined in this way, could serve a valuable balancing function). His position was, rather, that the aristocracy was the most dangerous (albeit necessary) element of any mixed regime. For a clear statement, see Adams to Thomas Jefferson, Nov. 15, 1813, in *The Adams-Jefferson Letters*, 397-402. See also Luke Mayville, “Fear of the Few: John Adams and the Power Elite” in *Polity* 47 (2015): 5-32.

aristocratic house in the prerogatives of the chief magistrate: ‘it is the true policy of the common people to place the whole executive power in one man, to make him a distinct order in the state, from whence arises an inevitable jealousy between him and the gentlemen; this forces him to become a father and protector of the common people, and to endeavor always to humble every proud, aspiring senator, or other officer in the state, who is in danger of acquiring an influence too great for the law, or the spirit of the constitution’.⁸⁸ Or, as he summarized the point more pithily, ‘no people, no king, and no king, no people’—thus inverting, or rather subverting, Montesquieu’s famous dictum, *point de monarque, point de noblesse; point de noblesse, point de monarque*.⁸⁹

Adams found his warrant for this monarchical political sociology in the very same Royalist account of feudal government that Hamilton had deployed (it is, indeed, extremely difficult to determine which of the two got there first). In his *Defence of the Constitutions of Government of the United States* (1787-88), he explains that, while monarchy in all governments ‘denominated feudal, was in theory, and pretension, absolute’, in fact ‘in every feudal country, where the people had not the sense and spirit to make themselves of importance, the barons became an aristocracy, incessantly encroaching upon the crown; and, under pretence of limiting its authority, they took away from it one prerogative after another, until it was reduced to the state of a mere doge of Venice, or avoyer of Berne; until the kings, by incorporating cities and granting privileges to the people, set them up against the nobles, and obtained by their means standing armies, sufficient to control both nobles and commons’.⁹⁰ Wholly repudiating his youthful embrace of the whig account of feudal absolutism, Adams faithfully

⁸⁸ Adams, *Defence*, 3:460.

⁸⁹ Adams, *Defence*, 1:87. Compare Montesquieu, *De l’esprit des lois*, II.4.

⁹⁰ Adams, *Defence*, 1:75. Compare Robertson, *History*, 35.

reproduces the rival account in all of its particulars: feudal baronial tyranny is finally supplanted when monarchs become patrons of the commons and builders of their cities.⁹¹ He now freely praises ‘Robertson, Hume and Gibbon’ for their ‘admirable accounts of the feudal institutions and their consequences’.⁹² But his distinctive pairing of Berne and Venice may indicate a debt to *The Wealth of Nations* as well (Adams owned a copy of the 1778 edition and, in 1790, wrote to his son John Quincy that he ought to read ‘Adam Smith &c both his Theory of Moral Sentiments and his Wealth of Nations’⁹³): Smith’s similar invocation of these two city states is one page removed from his claim about the ‘mutual interest’ of king and people under feudalism.⁹⁴ In any event, Adams agrees that

91 For a lucid account of the shift in Adams’s view of feudal history, see Darren Staloff, ‘John Adams and the Enlightenment’ in *A Companion to John Adams and John Quincy Adams*, ed. David Waldstreicher (Blackwell, 2013): 36-59 (esp. 45-50). Staloff, however, regards Adams’s pro-monarchical position as an artifact of the 1780s, whereas I see it as continuous with his views of the early 1770s.

92 Adams, *Defence*, 1:xxvi. Gibbon too had emphatically denied the existence of an ancient Saxon constitution of liberty: ‘It has been pretended that this republic of kings was moderated by a general council and a supreme magistrate. But such an artificial scheme of policy is repugnant to the rude and turbulent spirit of the Saxons: their laws are silent, and their imperfect annals afford only a dark and bloody prospect of intestine discord’ (see *Decline and Fall*, 6:272 (chap. 38)).

93 Adams to John Quincy Adams, Feb. 19, 1790. See *Catalogue of the John Adams Library in the Public Library of the City of Boston* (Boston, 1917). Adams quotes Smith’s *Theory of Moral Sentiments* in his *Discourses on Davila*, but nowhere directly cites *The Wealth of Nations*. See *Works of John Adams*, 6:257-62. He did, however, later refer to ‘the great works...of Adam Smith’ (10:385), whereas he frequently heaped criticism on Hume (despite his explicit endorsement of Hume’s account of feudalism)—not least for sugaring over ‘the crimes of the Stuarts’ (10:288). Adams’s enthusiastic embrace of Royalist constitutional theory did not prevent him from excoriating the Stuart monarchs for their embrace of ‘the Roman superstition’ and other errors (see *The Political Writings of John Adams*, 26-28). He differed in this respect from other “patriot Royalists.”

94 *Wealth of Nations* 1:403. Smith pairs Berne and Venice in his account of what transpired when ‘the sovereign came to lose the whole of his authority’ over the newly-powerful cities. However, if Adams did indeed take these examples from Smith, he either read carelessly or dissented from his source: Smith in fact distinguished Venice from Berne (the history of the former, on his telling, was ‘somewhat different’ from that of the latter and the other Italian republics). Adams’s argument about the rise of cities certainly resembles Smith’s: ‘the progress of foreign commerce and manufacture’, Smith

the pathology of feudalism is that it yields ‘a king without authority, a body of nobles in a state of uncontrolled anarchy; and a peasantry groaning under the yoke of feudal despotism’.⁹⁵ Once again, the feudal period is a wilderness of baronial ‘anarchy’ (what Adams also calls ‘aristocratical anarchy’⁹⁶) and the cure is as straightforward as the disease: ‘A king, meaning a single person vested with the whole executive, is the only remedy for the people, whenever the nobles get the better of them, and are on the scramble for unlimited power’.⁹⁷ Even ‘an absolute monarch’, Adams insists, ‘is a less evil than a crowd of lawless lords’.⁹⁸

This vision of the feudal past suffuses Adams’ correspondence and other writings from the 1790s and beyond. In October of 1790, Samuel Adams opined in a letter to his cousin that, when the people contend for the restoration of their liberties, they rarely succeed entirely. He then offered an example: ‘Were the people of England free, after

had argued, along with the incorporation and strengthening of cities by the crown, caused the barons to forfeit their power ‘to make war according to their own discretion’ (*Wealth of Nations* 2:418-419). But Hume and Robertson both offered similar narratives. The claim about standing armies is also quite Smithian, as is Adams’s later observation that ‘the people of England alone...have enabled their kings to curb the nobility, without giving him a standing army’ (*Defence*, 1:95). But Smith’s defense of this position appears chiefly in the *Lectures on Jurisprudence*, to which Adams (so far as we know) would not have had access. Here again, it is equally possible that Adams was making use of similar arguments in Hume and Robertson, the latter of whom may well have derived this material from Smith’s Edinburgh lectures (Robertson was accused early on of having plagiarized Smith’s account of feudal history (Phillipson, ‘Providence and progress’, 60)). See, for example, Hume, *History*, 3:80; Robertson, *History*, 1:95; Cf. John Millar, *Observations Concerning the Distinction of Ranks in Society* (London, 1771), 182-183; 190-191. Note that Adams seems also to have paraphrased Hume’s remark that ‘where [the king] was possessed of personal vigour and abilities (for his situation required these advantages) he was commonly able to preserve his authority, and maintain his station as head of the community, and the chief fountain of law and justice’ (Adams, *Defence* 1:75).
⁹⁵ Adams, *Defence*, 1:77.

⁹⁶ Adams, *Discourses on Davila* in *Works of John Adams*, 6:252. Robertson too had used the term ‘anarchy’ to describe feudalism (Robertson, *History*, 1:33-36), and, as we have seen, Adams certainly knew this second source as well.

⁹⁷ Adams, *Defence*, 3:457.

⁹⁸ Adams, *Defence*, 3:457.

they had obliged King John to concede to them their ancient rights and liberties, and promise to govern them according to the old law of the land?’⁹⁹ Clearly appalled by this whig characterization of Magna Carta, the other Adams pounced. ‘The people’, he fumed, ‘never did this. There was no people who pretended to any thing. It was the nobles alone. The people pretended to nothing but to be villains, vassals, and retainers to the king or the nobles’.¹⁰⁰ For Adams, the charter was not an instrument of popular liberty, but of baronial tyranny—indeed, the ‘people’ had no ‘ancient rights’ of government to speak of, because the Saxon constitution imagined by Samuel was a myth. ‘The English constitution in that period’, he explained in the *Discourses on Davila* (1791), ‘was not formed. The house of commons was not settled’.¹⁰¹

Adams frequently returned to this set of claims in the marginalia with which he filled his copies of contemporary histories. When reading Mary Wollstonecraft’s *Historical and Moral View of the Origin and Progress of the French Revolution* (1796), he came upon the claim that ‘since the existence of courts, the convenience and comforts of men have been sacrificed to the ostentatious display of pomp and pageantry’.¹⁰² This, he insisted, was simply to miss the point. In fact, as he scribbled in the margin, ‘cities have advanced liberty and knowledge by setting up kings to control nobles... Since the existence of courts, the barons have been humbled and the people liberated from villainage’.¹⁰³ When Wollstonecraft volunteered that ‘the education of the heir apparent

⁹⁹ Samuel Adams to John Adams, Oct. 4, 1790, reprinted in *Four Letters: Being an Interesting Correspondence between...John Adams, Late President of the United States, and Samuel Adams, Late Governor of Massachusetts* (Boston, 1802), 9.

¹⁰⁰ John Adams to Samuel Adams, Oct. 18, 1790, in *Four Letters*, 17.

¹⁰¹ *Works of John Adams*, vol. 6, 398.

¹⁰² Repr. in Zoltán Haraszti, *John Adams & The Prophets of Progress* (Cambridge, MA, 1952), 232.

¹⁰³ Repr. in Haraszti, *John Adams & The Prophets of Progress*, 232-233.

of a crown must necessarily destroy the common sagacity and feelings of a man', Adams responded in highly revealing terms:

This is not true. Some thousands of sovereigns in Europe have proved the contrary. But it is the tone to belie princes. Aristocracy is again preparing Barons' Wars, under other names. The people, I hope, will be gainers by them in the end, but the process is cruel.¹⁰⁴

For Adams, the antimonarchical program of revolution, in France and elsewhere, invoked the many but, in truth, served only the few—these were 'Barons' Wars, under other names'. He offered a further gloss on this somewhat obscure comment in a 1798 letter:

'If French principles and systems [were to] prevail', he argued, each European nation would become a mere 'congregation of soldiers and serfs'. The 'officers of the army' would replace 'the nobility and the clergy', and when these proconsuls inevitably 'begin to quarrel with one another, five hundred years more of Barons' wars may succeed'.¹⁰⁵

Like the original barons' wars of feudal Europe (such as the one that delivered Magna Carta), these could only conceivably benefit the people by means of a 'cruel' and dialectical process: the few would be dangerously empowered, leading them to tyrannize over the people; the people would then turn to monarchs to protect them from the 'nobles'; and, ultimately, this revived alliance between the one and the many might succeed in making the people 'gainers' in the end. But, as Adams insists, it is clearly not a game that one should choose to play.

¹⁰⁴ Repr. in Haraszti, *John Adams & The Prophets of Progress*, 190. Adams had referred to Parliament as 'the barons of modern times' as early as 1769—although at this stage, he still admired the 'ancient barons' who demanded Magna Carta. See 'Instructions of the Town of Boston to their Representatives, May 15, 1769' in *Works of John Adams*, 3:508. In his late exchange with John Taylor, he insists that all 'demagogues and popular orators' are 'a species of feudal barons', and that 'mobs never follow any but aristocrats' (*Works of John Adams*, 6:508).

¹⁰⁵ Adams to the Boston Marine Society, Sept. 7, 1798, in *Works of John Adams*, 9:221.

III

The Royalist conception of feudal history certainly did not go unchallenged in the early American republic. Indeed, while a full examination of American views of the feudal law and the ‘ancient constitution’ has yet to be performed, we can offer a reasonable guess as to what such a survey would reveal. Those ‘patriot Royalists’ who fought to expand the royal prerogative in the 1770s, and who became chief advocates of a powerful presidency in the 1780s, would be expected to side with Hume, Smith, Adams, and Hamilton on the dangers of ‘lawless lords’ and the fictitiousness of the ancient constitution, while their opponents would likely be drawn to the whig language of feudal absolutism and Saxon liberty. The division over the history and character of feudalism, in short, ought to map onto the broader contest between Royalist and whig ideologies in late eighteenth century America.

It is therefore unsurprising to find Charles Pinckney of South Carolina—a strong advocate for the new chief executive—explaining in the Constitutional Convention that, in the feudal period, ‘the crown of Great Britain was obliged to yield to the claims of power which those large possessions enabled [the nobles] to assert’.¹⁰⁶ ‘The Commons’, he continued, ‘were then too contemptible to form part of the national councils. Many Parliaments were held without their being represented; until, in process of time, under the protection of the crown, and forming distinct communities, they obtained some weight in

¹⁰⁶*The Records of the Federal Convention of 1787*, ed. Max Farrand, 3 vols. (New haven, 1911), 1:410 (Yates).

the British government'.¹⁰⁷ Here we find each distinctive prong of the Royalist attack on whig historiography: 1) the insistence that feudalism dangerously empowered barons, not king; 2) a rejection of the antiquity of the House of Commons and, with it, the notion of an ancient Saxon constitution of liberty; and 3) the assertion that the Commons advanced 'under the protection of the Crown.'

It is equally straightforward to find Edmund Randolph—who fiercely opposed the creation of a single chief magistrate in Philadelphia—arguing in the Virginia ratifying convention that 'the object of Magna Carta' was 'but to destroy the power of the king, and secure the liberty of the people' and that 'the bill of rights was intended to restore the government to its primitive principles'.¹⁰⁸ Here we predictably find the central articles of the whig historiographical catechism: the claim that Magna Carta was an attack on royal absolutism in the name of popular liberty, rather than baronial hegemony; and the insistence that English liberties have their roots in the 'primitive principles' of an ancient, pre-feudal constitution, which both Magna Carta and the Bill of Rights aimed simply to 'restore'.

Sometimes, to be sure, matters are not quite so neat. James Wilson, for example, proposed the motion that created the presidency in 1787 and defended his expansive conception of executive power by declaring that, during the Revolution, 'the people of America Did not oppose the British King but the parliament—the opposition was not against an Unity but a corrupt multitude'.¹⁰⁹ For him, as for Adams and Hamilton, the

¹⁰⁷ Madison's notes on the same speech contain different shades of emphasis and omit the claim that the commons advanced 'under the protection of the Crown'. Madison agrees, however, that Pinckney stressed the degree to which, under feudalism, the power of the nobles "induced the Monarch to look up to them." See Farand, *Records*, 1: 399-400.

¹⁰⁸ Elliot, *Records*, 1:190.

¹⁰⁹ Farrand, *Records*, 1:65.

chief magistrate was quintessentially the ‘man of the people’ who would ‘stand the mediator between the intrigues & sinister views of the Representatives and the general liberties & interests of the people’.¹¹⁰ Yet Wilson’s conception of the feudal past was far more ambivalent than either Adams’s or Hamilton’s. On the one hand, he agreed with his colleagues in the patriot opposition that feudalism had established baronial ‘anarchy’, rather than absolutism. ‘The power of preserving the limitations of monarchy, for the purposes of liberty’, he argued in 1774, was not ‘properly placed in the barons. Domineering and turbulent, they oppressed their vassals, and treated them as slaves; they opposed their prince, and were impatient of every legal restraint’.¹¹¹ In the very next paragraph, Wilson likewise appeared to deny the antiquity of the Commons.¹¹² But in his speech to the Pennsylvania Convention the following year, he casually referred to ‘the convention of the Barons at Running Meade, where the tyranny of John was checked, and magna charta signed’.¹¹³ And in his 1790 Lectures on Law, he made clear his continuing allegiance to the whig conceit of Saxon liberty, even going so far as to claim that the ‘elective’, rather than hereditary title of ‘our first executive magistrate’ should be understood to embody ‘a renewal, in this particular of the ancient English constitution’.¹¹⁴

¹¹⁰ See James Wilson, ‘Lectures on Law’ (1790), in *Works of James Wilson*, 1:319; and Farrand, *Records*, 2:30.

¹¹¹ Wilson, *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament*, in *Works*, 2:729.

¹¹² ‘During the reigns of the first Norman princes’, Wilson observed, the checks on monarchical power were located in the clergy and the nobles alone. ‘But after the representatives of the commons began to sit in a separate house; to be considered as a distinct branch of the legislature; and, as such, to be invested with separate and independent powers and privileges; then the constitution assumed a very different appearance’ (*Works*, 2:729). This remark seems to deny that the House of Commons existed ‘time out of mind’.

¹¹³ Wilson, ‘Speech Delivered in the Convention for the Province of Pennsylvania’ (January 1775) in *Works*, 2:751.

¹¹⁴ Wilson, *Works*, 1:346-357; 1:436. For Wilson’s engagement with whig historiography, see Colbourn, *The Lamp of Experience*, 144-154.

The moral of my story is, therefore, emphatically not that our histories of Revolutionary America ought to substitute an imagined Royalist ideological monopoly for the conventional whig one. Rather we should accept that there were deep philosophical and historiographical fissures in the patriot movement from its inception, and that these continued to ramify in the first decade of the new republic. This picture of the Revolutionary landscape may not be quite the one that Professor Pocock had in mind in 1975, but it is only intelligible in light of his extraordinary scholarship.